

ENTERED

February 14, 2018

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KENNETH DAVIDSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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CIVIL ACTION NO. H-17-1554

ORDER

The court has conducted a de novo review of the Magistrate Judge's Memorandum, Recommendation and Order (Docket Entry No. 12). No objections were filed by either party. After considering the motion, the response, and all other pleadings, the court finds that the recommendation to dismiss Petitioner's action as untimely is supported by the facts and applicable law. The Memorandum, Recommendation and Order is hereby **ADOPTED** by the court; and a final judgment will be entered dismissing the action for lack of jurisdiction.

The Magistrate Judge also addressed Respondent's counterclaim for enforcement of the JPMorgan Chase Bank summons. As outlined in the Memorandum, Recommendation and Order, the Declaration of IRS Special Agent Bessilynn Spikes satisfied the Powell factors, and the only remaining impediment to enforcement of the summons was whether there was a referral to the Department of Justice for

criminal prosecution. The January 30, 2018, Declaration of Special Agent Spikes (Docket Entry No. 15) answered that question in the negative.

The court therefore finds that:

- (1) The summons was properly issued by Respondent to JPMorgan Chase Bank, which failed to produce the items sought in the summons.
- (2) The summons was reasonably certain about the items requested and was not overly broad.
- (3) The summons was issued for the lawful purpose of conducting a criminal investigation into possible violations of the Internal Revenue Code by Petitioner for the following tax years: 2011, 2012, 2013, 2014, 2015, 2016, and 2017.
- (4) The items sought in the summons are relevant and material to the lawful purpose.
- (5) No Department of Justice referral as defined in 26 U.S.C. § 7602(d)(2)(A) has been made.
- (6) The summons to Chase Bank must be enforced.

SIGNED at Houston, Texas, on this 14th day of February, 2018.

A handwritten signature in black ink, appearing to read 'Sim Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE